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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,898	12/09/2003	Michael R. Spencer	098719-100001	4701
34026	7590	04/18/2007		
JONES DAY 555 SOUTH FLOWER STREET FIFTIETH FLOOR LOS ANGELES, CA 90071			EXAMINER BLANKENSHIP, GREGORY A	
			ART UNIT	PAPER NUMBER
			3612	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/18/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/731,898

Applicant(s)

SPENCER ET AL.

Examiner

Greg Blankenship

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on RCE filed 2/21/2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 and 29-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9, 11, 12 and 16-18 is/are allowed.
- 6) ☒ Claim(s) 1-8, 10, 13-15, 19-27 and 29-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>2/23/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 5, 6, 8, 10, 13-15, 24-27, and 29-34 rejected under 35 U.S.C. 103(a) as being unpatentable over Wheatley (6,386,616) in view of Downey (5,522,635).

In reference to claims 1 and 2, Wheatley discloses a cover system (21) for an open top truck box (16). Figure 1 shows the truck box (16) with a rear wall (14) and two sidewalls (12).

While not shown, the truck box also has a front wall. The cover system (21) includes a flexible cover material (22) that has dimensions approximately the same as the dimensions of the truck box (16). Rails (24,26) extend along the upper edge (18) of sidewalls (12). Each rail (24,26) has a channel that has an opening, defined between walls (48,60), which face outwardly. Elongated fastening means (30) are rigid and have integrally formed fastening surfaces (72). The fastening surfaces (72) engage fastening means (32) that are along the edge of the downwardly facing surface of the flexible cover material (22). The elongated fastening means slide along the rails while being dimensioned to be incapable of lateral movement from the channel as shown in Figure 3. In reference to claims 5 and 24, mounting flanges extend from the inner wall (40) of the rail (24,26) as seen in Figure 3. In reference to claims 6 and 25, C-clamps are used to attach the rails (24,26) to the top edges as disclosed on lines 46-48 of column 2. In reference to claim 8, the channel is inclined. In

reference to claims 10, 13, 29, and 32, the female connectors (32) are located along the edge of the flexible material (22). The material directly around the female connectors (32) meets the claim limitations of the claimed "first fastening material". Second fastening material (72) is integrally formed with elongated slats (62) and is reversibly engageable with the first fastening material (32). The second fastening material (72) is prevented from sliding removal from the track by stops (27). In reference to claims 14, 30, 31, 33, and 34, the slats (62) are shorter than the channel, as seen in the Figures. In reference to claims 15 and 26, the stops (27) are end caps that are detachably connected to opposing ends of the rails (24,26). However, Wheatley does not disclose the second elongated fastening means that has a transverse cross-section dimensioned to fit within the channel.

Downey teaches forming the channel (59) and fastening means (74) that has a transverse cross-section that is dimensioned to fit within the channel to permit longitudinal sliding engagement between the second fastening means and the channel and prevent lateral movement of the second fastening means from the channel. In reference to claims 13, 29, 31, and 32, the fastening surface of the elongated slat is exposed through the channel for reversible attachment with the first fastening means (96), as shown in Figure 4.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the channel of Wheatley such that it can fit the transverse cross-section of the second fastening means of Wheatley exposing the fastening surface of the elongated slat through the channel, as taught by Downey, to provide an alternative construction that does not degrade the performance of the fastening means.

1. Claims 3, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Wheatley (6,386,616) and Downey (5,522,635), in view of Byrd et al. (4,496,184).

Wheatley, as modified, does not disclose the fasteners being hook and loop material.

Byrd et al. teach the use of hook and loop material (68,76) to connect a truck box cover (26) to a rail (72).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the snaps of Wheatley, as modified, with the hook and loop fasteners such that, in reference to claim 19, the loop material is affixed to the flexible cover and the hook material is permanently affixed to the slats and, in reference to claim 20, the hook material is affixed to the flexible cover and the loop material is permanently affixed to the slats to provide a suitable fastener that won't be as difficult to undo when subjected to freezing rain

2. Claims 4 and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Wheatley (6,386,616) and Downey (5,522,635), in view of Tucker (5,261,719).

Wheatley, as modified, does not disclose the frame being made of extruded aluminum.

Tucker teaches the forming of rails formed of extruded aluminum.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the rails of Wheatley, as modified, by extruding aluminum as an obvious expedient that would result in a lightweight and rust-resistant rail.

3. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Wheatley (6,386,616) and Downey (5,522,635).

Wheatley, as modified, does not disclose the channel extending substantially vertical.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the channel of Wheatley, as modified, such that it extends substantially vertical to improve the connection between the rail and the flexible cover by increasing the

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resistance of the connection to disconnections caused by cargo bouncing up into the flexible cover.

Allowable Subject Matter

4. Claims 9, 11, 12, and 16-18 are allowed.

Response to Arguments

5. Applicant's arguments with respect to claims 1, 10, 13, 29, 31, and 32 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Greg Blankenship whose telephone number is 571-272-6656.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on 571-272-6659. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

gab

April 16, 2007



BLANKSHIP
REG. EXAMINER